Written evidence submitted by Backlash UK

Executive Summary

- Criminal law is inappropriate for regulating consenting adult sexual activity, including sex work.
- Criminalisation of either sex workers themselves or their clients has the effect of stigmatising sex workers unfairly.
- It prevents some people who lack the capacity to maintain long-term intimate relationships, such as those with severe physical disabilities or the elderly, from pursuing their legitimate interest in sexuality.
- It puts sex workers in an antagonistic position with public authorities, reducing the personal security of sex workers.
- It can create opportunities and temptations for police officers to engage in opportunistic or predatory behaviour.
- It can prevent sex workers integrating into normal labour market activity, such as making national insurance contributions and developing a credit record. These are essential for personal savings and accessing long-term legally secured housing.

About Backlash

1. Backlash is an umbrella organisation made up of volunteers providing academic, legal and campaigning resources defending freedom of sexual expression. We support the rights of adults to participate in all consensual sexual activities and to watch, read and create any fictional interpretation of such in any media. We were established in 2005.

2. Backlash’s pro bono legal adviser, solicitor advocate Myles Jackman was awarded young lawyer of the year in 2013 for his work in sexual civil liberties. He successfully defended sex worker Michael Peacock from charges under the Obscene Publications Act. Our work includes providing legal advice to sex workers, especially those facing harassment or threatening behaviour from members of the public or a risk of ‘outing’ to employers either by state agencies, news media or other ‘freelance’ moralists.
3. In recognition of the importance of women’s perspectives on civil liberties when it comes to the area sexuality, Backlash has aimed since its inception to have women in leadership positions within the organisation. Our policy positions reflect the direct experience of sex workers, especially those working in areas of fetish, LGBTQ and BDSM.

**Our case**

4. Our position is that criminal sanctions relating to consenting adult sexual activity should be lifted. This includes sexual activities that take place as part of a commercial arrangement. No new crimes should be introduced targeting either sex workers or their clients. This position reflects the evidence-based approach of Amnesty International, developed as a result of careful deliberation about the human rights of individuals who choose to engage in sex work. It also reflects the real interests of sex workers as described by the position of the English Collective of Prostitutes.

5. The terms of reference ‘Whether criminal sanction in relation to prostitution should continue to fall more heavily on those who sell sex, rather than those who buy it’ assumes, without good evidence, that there is any appropriate role for criminal law for regulating sexual activity between consenting adults.

6. We contest this assumption on the simple basis that sex workers are, in fact, human beings capable of as much choice and agency as anyone else. They are not typically ‘forced’ into their line of work anymore than anyone else is compelled by material circumstances to seek employment. While such choices may sometimes reflect an economically insecure position (just as working longer hours or accepting harsher conditions in other sectors may reflect such a position), reducing demand for sex work will not improve that economic position.

7. Some, though not all, sex workers choose this sector because they find the work more rewarding than reasonable alternative forms of work. It may be more remunerative, or more socially and intellectually stimulating. In the area of LGBTQ and BDSM, in particular, it may reflect an authentic personal interest in exploring the breadth of human sexual identities.
8. Criminalising the selling or buying of sex work would penalise alternative forms of sexual expression among consenting adults that fall outside traditional notions of relationships and the family unit. For example, many people with physical disabilities, or simply those of advanced age, lack the resources to maintain a long-term intimate relationship but still have an interest in expressing their sexuality. Sex workers can aid in fulfilling this legitimate desire. Criminalising clients could thus have a disproportionate impact on an already disadvantaged group.

9. The issue of where the burden of criminal regulation should lie reflects a growing interest in the United Kingdom of the so-called ‘Swedish model’, which purports to de-criminalise sex work while criminalising clients of sex workers. In fact, it is impossible to criminalise clients without implicating sex workers in the criminal justice system. Sex workers, whether in legal or practical terms, become accessories, conspirators and witnesses to a criminal offence.

10. This has the effect of stigmatising sex workers. This is damaging in the same way that legal restrictions relating to children born out of wedlock generated stigma against a whole class of people in the past. The stigma of so-called ‘bastardy’ no longer exists in mainstream society principally because that social position is no longer reflected in any significant way in law. Similarly, if sex work were treated legally as ordinary work, a great deal of the stigma associated with it would begin to lift.

11. Existing and proposed criminal regulation has the effect of placing sex workers in an antagonistic position with public authorities. Under a ‘Swedish model’, active sex workers are necessarily non-compliant witnesses of criminal offences. This means that police are far less accessible to sex workers who fear for their safety but nevertheless wish to carry on their business. The normal protections of a civilised society afforded to those carrying out gainful employment are thus denied to sex workers.

12. Criminalising any aspect of sex work can also have a deleterious impact on police conduct. It creates opportunities for police officers to engage in opportunistic or predatory behaviour, such as demanding compensation or sexual favours from sex workers in exchange for not disrupting them in the course of their work.
13. The criminalisation of any aspect of sex work makes the integration of sex workers difficult or impossible. For sex workers working together in an association, problems that emerge in the workplace cannot be reported to appropriate authorities for fear it would provoke a police response that will shut down their main source of income. For independent sex workers, it becomes harder to make national insurance contributions and save for retirement or prepare for periods of sickness. Sex workers are unable to report regular incomes which might be necessary for developing a credit record and accessing long-term housing. In short, criminalisation of the sector materially worsens the conditions of sex workers.

14. By contrast, the phenomenon of human trafficking and modern slavery is clearly an appropriate area of criminal law. Severe criminal sanctions are appropriate for anyone who uses force or fraud to obtain labour from someone else, whether sex work, domestic work or work in any commercial sector. This requires a different, and much more robust, approach compared to consensual sex work because sex work in the United Kingdom is not typically associated with forcible or coerced trafficking. The two issues should be separated.